

103^D CONGRESS
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S. 2375

To amend title 18, United States Code, to make clear a telecommunications carrier's duty to cooperate in the interception of communications for law enforcement purposes, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 9 (legislative day, AUGUST 8), 1994

Mr. LEAHY introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To amend title 18, United States Code, to make clear a telecommunications carrier's duty to cooperate in the interception of communications for law enforcement purposes, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. INTERCEPTION OF DIGITAL AND OTHER COM-**
4 **MUNICATIONS.**

5 (a) IN GENERAL.—Part I of title 18, United States
6 Code, is amended by inserting after chapter 119 the fol-
7 lowing new chapter:

1 **“CHAPTER 120—TELECOMMUNICATIONS**
 2 **CARRIER ASSISTANCE TO THE GOV-**
 3 **ERNMENT**

“Sec.

“2601. Definitions.

“2602. Assistance capability requirements.

“2603. Notices of capacity requirements.

“2604. Systems security and integrity.

“2605. Cooperation of equipment manufacturers and providers of telecommuni-
cations support services.

“2606. Technical requirements and standards; extension of compliance date.

“2607. Enforcement orders.

“2608. Reimbursement of telecommunications carriers.

4 **“§ 2601. Definitions**

5 “(a) DEFINITIONS.—In this chapter—

6 “the terms defined in section 2510 have, re-
 7 spectively, the meanings stated in that section.

8 “‘call-identifying information’—

9 “(A) means all dialing or signalling infor-
 10 mation associated with the origin, direction,
 11 destination, or termination of each communica-
 12 tion generated or received by the subscriber
 13 equipment, facility, or service of a telecommuni-
 14 cations carrier that is the subject of a court
 15 order or lawful authorization; but

16 “(B) does not include any information that
 17 may disclose the physical location of the sub-
 18 scriber (except to the extent that the location
 19 may be determined from the telephone number).

1 “‘Commission’ means the Federal Communica-
2 tions Commission.

3 “‘government’ means the government of the
4 United States and any agency or instrumentality
5 thereof, the District of Columbia, any common-
6 wealth, territory, or possession of the United States,
7 and any State or political subdivision thereof author-
8 ized by law to conduct electronic surveillance.

9 “‘information services’—

10 “(A) means the offering of a capability for
11 generating, acquiring, storing, transforming,
12 processing, retrieving, utilizing, or making
13 available information via telecommunications;
14 and

15 “(B) includes electronic publishing and
16 messaging services; but

17 “(C) does not include any use of any such
18 capability for the management, control, or oper-
19 ation of a telecommunications system or the
20 management of a telecommunications service.

21 “‘provider of telecommunications support serv-
22 ices’ means a person or entity that provides a prod-
23 uct, software, or service to a telecommunications
24 carrier that is integral to such carrier’s switching or
25 transmission of wire or electronic communications.

1 “‘telecommunications carrier’—

2 “(A) means a person or entity engaged in
3 the transmission or switching of wire or elec-
4 tronic communications as a common carrier for
5 hire (within the meaning of section 3(h) of the
6 Communications Act of 1934 (47 U.S.C.
7 153(h))); and

8 “(B) includes—

9 “(i) a person or entity engaged in pro-
10 viding commercial mobile service (as de-
11 fined in section 332(d) of the Communica-
12 tions Act of 1934 (47 U.S.C. 332(d))); and

13 “(ii) a person or entity engaged in
14 providing wire or electronic communication
15 switching or transmission service to the ex-
16 tent that the Commission finds that such
17 service is a replacement for a substantial
18 portion of the local telephone exchange
19 service and that it is in the public interest
20 to deem such a person or entity to be a
21 telecommunications carrier for purposes of
22 this chapter; but

23 “(C) does not include persons or entities
24 insofar as they are engaged in providing infor-
25 mation services.

1 **“§ 2602. Assistance capability requirements**

2 “(a) CAPABILITY REQUIREMENTS.—Except as pro-
3 vided in subsections (b), (c), and (d) of this section, and
4 subject to section 2607(c), a telecommunications carrier
5 shall ensure that its services or facilities that provide a
6 customer or subscriber with the ability to originate, termi-
7 nate, or direct communications are capable of—

8 “(1) expeditiously isolating and enabling the
9 government to intercept, to the exclusion of any
10 other communications, all wire and electronic com-
11 munications carried by the carrier within a service
12 area to or from equipment, facilities, or services of
13 a subscriber of such carrier concurrently with their
14 transmission to or from the subscriber’s service, fa-
15 cility, or equipment or at such later time as may be
16 acceptable to the government;

17 “(2) expeditiously isolating and enabling the
18 government to access call-identifying information
19 that is reasonably available to the carrier—

20 “(A) before, during, or immediately after
21 the transmission of a wire or electronic commu-
22 nication (or at such later time as may be ac-
23 ceptable to the government); and

24 “(B) in a manner that allows it to be asso-
25 ciated with the communication to which it per-
26 tains,

1 except that, with regard to information acquired
2 solely pursuant to the authority for pen registers
3 and trap and trace devices (as defined in section
4 3127), such call-identifying information shall not in-
5 clude any information that may disclose the physical
6 location of the subscriber (except to the extent that
7 the location may be determined from the telephone
8 number);

9 “(3) delivering intercepted communications and
10 call-identifying information to the government in a
11 format such that they may be transmitted by means
12 of facilities or services procured by the government
13 to a location other than the premises of the carrier;
14 and

15 “(4) facilitating authorized communications
16 interceptions and access to call-identifying informa-
17 tion unobtrusively and with a minimum of inter-
18 ference with any subscriber’s telecommunications
19 service and in a manner that protects—

20 “(A) the privacy and security of commu-
21 nications and call-identifying information not
22 authorized to be intercepted; and

23 “(B) information regarding the govern-
24 ment’s interception of communications and ac-
25 cess to call-identifying information.

1 “(b) LIMITATIONS.—

2 “(1) DESIGN OF FEATURES AND SYSTEMS CON-
3 FIGURATIONS.—This chapter does not authorize any
4 law enforcement agency or officer—

5 “(A) to require any specific design of fea-
6 tures or system configurations to be adopted by
7 providers of wire or electronic communication
8 service, manufacturers of telecommunications
9 equipment, or providers of telecommunications
10 support services; or

11 “(B) to prohibit the adoption of any fea-
12 ture or service by providers of wire or electronic
13 communication service, manufacturers of tele-
14 communications equipment, or providers of tele-
15 communications support services.

16 “(2) INFORMATION SERVICES AND INTER-
17 CONNECTION SERVICES AND FACILITIES.—The re-
18 quirements of subsection (a) do not apply to—

19 “(A) information services; or

20 “(B) services or facilities that support the
21 transport or switching of communications for
22 the sole purpose of interconnecting tele-
23 communications carriers or private networks.

24 “(3) ENCRYPTION.—A telecommunications car-
25 rier shall not be responsible for decrypting, or ensur-

1 ing the government’s ability to decrypt, any commu-
2 nication encrypted by a subscriber or customer, un-
3 less the encryption was provided by the carrier and
4 the carrier possesses the information necessary to
5 decrypt the communication.

6 “(c) EMERGENCY OR EXIGENT CIRCUMSTANCES.—In
7 emergency or exigent circumstances (including those de-
8 scribed in sections 2518 (7) or (11)(b) and 3125 of this
9 title and section 1805(e) of title 50), a carrier may fulfill
10 its responsibilities under subsection (a)(3) by allowing
11 monitoring at its premises if that is the only means of
12 accomplishing the interception or access.

13 “(d) MOBILE SERVICE ASSISTANCE REQUIRE-
14 MENTS.—A telecommunications carrier offering a feature
15 or service that allows subscribers to redirect, hand off, or
16 assign their wire or electronic communications to another
17 service area or another service provider or to utilize facili-
18 ties in another service area or of another service provider
19 shall ensure that, when the carrier that had been providing
20 assistance for the interception of wire or electronic com-
21 munications or access to call-identifying information pur-
22 suant to a court order or lawful authorization no longer
23 has access to the content of such communications or call-
24 identifying information within the service area in which
25 interception has been occurring as a result of the subscrib-

1 er's use of such a feature or service, information is avail-
 2 able to the government (before, during, or immediately
 3 after the transfer of such communications) identifying the
 4 provider of wire or electronic communication service that
 5 has acquired access to the communications.

6 **“§ 2603. Notices of capacity requirements**

7 “(a) NOTICES OF MAXIMUM AND INITIAL CAPACITY
 8 REQUIREMENTS.—

9 “(1) IN GENERAL.—Not later than 1 year after
 10 the date of enactment of this chapter, and after con-
 11 sulting with State and local law enforcement agen-
 12 cies, telecommunications carriers, providers of tele-
 13 communications support services, and manufacturers
 14 of telecommunications equipment, the Attorney Gen-
 15 eral shall publish in the Federal Register and pro-
 16 vide to appropriate telecommunications carrier asso-
 17 ciations, standard-setting organizations, and fora—

18 “(A) notice of the maximum capacity re-
 19 quired to accommodate all of the communica-
 20 tion interceptions, pen registers, and trap and
 21 trace devices that the Attorney General esti-
 22 mates that government agencies authorized to
 23 conduct electronic surveillance may conduct and
 24 use simultaneously; and

1 “(B) notice of the number of communica-
2 tion interceptions, pen registers, and trap and
3 trace devices, representing a portion of the
4 maximum capacity set forth under subpara-
5 graph (A), that the Attorney General estimates
6 that government agencies authorized to conduct
7 electronic surveillance may conduct and use si-
8 multaneously after the date that is 4 years
9 after the date of enactment of this chapter.

10 “(2) BASIS OF NOTICES.—The notices issued
11 under paragraph (1) may be based upon the type of
12 equipment, type of service, number of subscribers,
13 geographic location, or other measure.

14 “(b) COMPLIANCE WITH CAPACITY NOTICES.—

15 “(1) INITIAL CAPACITY.—Within 3 years after
16 the publication by the Attorney General of a notice
17 of capacity requirements or within 4 years after the
18 date of enactment of this chapter, whichever is
19 longer, a telecommunications carrier shall ensure
20 that its systems are capable of—

21 “(A) expanding to the maximum capacity
22 set forth in the notice under paragraph (1)(A);
23 and

24 “(B) accommodating simultaneously the
25 number of interceptions, pen registers, and trap

1 and trace devices set forth in the notice under
2 paragraph (1)(B).

3 “(2) PERMANENT CAPACITY.—After the date
4 described in paragraph (1), a telecommunications
5 carrier shall ensure that it can accommodate expedi-
6 tiously any increase in the number of communication
7 interceptions, pen registers, and trap and trace de-
8 vices that authorized agencies may seek to conduct
9 and use, up to the maximum capacity requirement
10 set forth in the notice under paragraph (1)(A).

11 “(c) NOTICES OF INCREASED MAXIMUM CAPACITY
12 REQUIREMENTS.—

13 “(1) The Attorney General shall periodically
14 provide to telecommunications carriers written notice
15 of any necessary increases in the maximum capacity
16 requirement set forth in the notice under subsection
17 (b)(1).

18 “(2) Within 3 years after receiving written no-
19 tice of increased capacity requirements under para-
20 graph (1), or within such longer time period as the
21 Attorney General may specify, a telecommunications
22 carrier shall ensure that its systems are capable of
23 expanding to the increased maximum capacity set
24 forth in the notice.

1 **“§ 2604. Systems security and integrity**

2 “A telecommunications carrier shall ensure that any
3 court ordered or lawfully authorized interception of com-
4 munications or access to call-identifying information ef-
5 fected within its switching premises can be activated only
6 with the affirmative intervention of an individual officer
7 or employee of the carrier.

8 **“§ 2605. Cooperation of equipment manufacturers**
9 **and providers of telecommunications**
10 **support services**

11 “(a) CONSULTATION.—A telecommunications carrier
12 shall consult, as necessary, in a timely fashion with manu-
13 facturers of its telecommunications transmission and
14 switching equipment and its providers of telecommuni-
15 cations support services for the purpose of identifying any
16 service or equipment, including hardware and software,
17 that may require modification so as to permit compliance
18 with this chapter.

19 “(b) MODIFICATION OF EQUIPMENT AND SERV-
20 ICES.—Subject to section 2607(c), a manufacturer of tele-
21 communications transmission or switching equipment and
22 a provider of telecommunications support services shall,
23 on a reasonably timely basis and at a reasonable charge,
24 make available to the telecommunications carriers using
25 its equipment or services such modifications as are nec-
26 essary to permit such carriers to comply with this chapter.

1 **“§ 2606. Technical requirements and standards; ex-**
2 **tension of compliance date**

3 “(a) SAFE HARBOR.—

4 “(1) CONSULTATION.—To ensure the efficient
5 and industry-wide implementation of the assistance
6 capability requirements under section 2602, the At-
7 torney General, in coordination with other Federal,
8 State, and local law enforcement agencies, shall con-
9 sult with appropriate associations and standard-set-
10 ting organizations of the telecommunications indus-
11 try.

12 “(2) COMPLIANCE UNDER ACCEPTED STAND-
13 ARDS.—A telecommunications carrier shall be found
14 to be in compliance with the assistance capability re-
15 quirements under section 2602, and a manufacturer
16 of telecommunications transmission or switching
17 equipment or a provider of telecommunications sup-
18 port services shall be found to be in compliance with
19 section 2605, if the carrier, manufacturer, or sup-
20 port service provider is in compliance with publicly
21 available technical requirements or standards are
22 adopted by an industry association or standard-set-
23 ting organization or by the Commission under sub-
24 section (b) to meet the requirements of section 2602.

25 “(3) ABSENCE OF STANDARDS.—The absence
26 of technical requirements or standards for imple-

1 menting the assistance capability requirements of
2 section 2602 shall not—

3 “(A) preclude a carrier, manufacturer, or
4 services provider from deploying a technology or
5 service; or

6 “(B) relieve a carrier, manufacturer, or
7 service provider of the obligations imposed by
8 section 2602 or 2605, as applicable.

9 “(b) FCC AUTHORITY.—

10 “(1) IN GENERAL.—If industry associations or
11 standard-setting organizations fail to issue technical
12 requirements or standards or if a government agen-
13 cy or any other person believes that such require-
14 ments or standards are deficient, the agency or per-
15 son may petition the Commission to establish, by no-
16 tice and comment rulemaking or such other proceed-
17 ings as the Commission may be authorized to con-
18 duct, technical requirements or standards that—

19 “(A) meet the assistance capability re-
20 quirements of section 2602;

21 “(B) protect the privacy and security of
22 communications not authorized to be inter-
23 cepted; and

1 “(C) serve the policy of the United States
2 to encourage the provision of new technologies
3 and services to the public.

4 “(2) TRANSITION PERIOD.—If an industry tech-
5 nical requirement or standard is set aside or sup-
6 planted as a result of Commission action under this
7 section, the Commission, after consultation with the
8 Attorney General, shall establish a reasonable time
9 and conditions for compliance with and the transi-
10 tion to any new standard, including defining the ob-
11 ligations of telecommunications carriers under sec-
12 tion 2602 during any transition period.

13 “(c) EXTENSION OF COMPLIANCE DATE FOR FEA-
14 TURES AND SERVICES.—

15 “(1) PETITION.—A telecommunications carrier
16 proposing to deploy, or having deployed, a feature or
17 service within 4 years after the date of enactment of
18 this chapter may petition the Commission for 1 or
19 more extensions of the deadline for complying with
20 the assistance capability requirements under section
21 2602.

22 “(2) GROUND FOR EXTENSION.—The Commis-
23 sion may, after affording a full opportunity for hear-
24 ing and after consultation with the Attorney Gen-
25 eral, grant an extension under this paragraph, if the

1 Commission determines that compliance with the as-
2 sistance capability requirements under section 2602
3 is not reasonably achievable through application of
4 technology available within the compliance period.

5 “(3) LENGTH OF EXTENSION.—An extension
6 under this paragraph shall extend for no longer than
7 the earlier of—

8 “(A) the date determined by the Commis-
9 sion as necessary for the carrier to comply with
10 the assistance capability requirements under
11 section 2602; or

12 “(B) the date that is 2 years after the date
13 on which the extension is granted.

14 “(4) APPLICABILITY OF EXTENSION.—An ex-
15 tension under this subsection shall apply to only that
16 part of the carrier’s business on which the new fea-
17 ture or service is used.

18 **“§ 2607. Enforcement orders**

19 “(a) ENFORCEMENT BY COURT ISSUING SURVEIL-
20 LANCE ORDER.—If a court authorizing an interception
21 under chapter 119, a State statute, or the Foreign Intel-
22 ligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.)
23 or authorizing use of a pen register or a trap and trace
24 device under chapter 206 or a State statute finds that a
25 telecommunications carrier has failed to comply with the

1 requirements in this chapter, the court may direct that
2 the carrier comply forthwith and may direct that a pro-
3 vider of support services to the carrier or the manufac-
4 turer of the carrier's transmission or switching equipment
5 furnish forthwith modifications necessary for the carrier
6 to comply.

7 “(b) ENFORCEMENT UPON APPLICATION BY ATTOR-
8 NEY GENERAL.—The Attorney General may apply to the
9 appropriate United States district court for, and the Unit-
10 ed States district courts shall have jurisdiction to issue,
11 an order directing that a telecommunications carrier, a
12 manufacturer of telecommunications transmission or
13 switching equipment, or a provider of telecommunications
14 support services comply with this chapter.

15 “(c) GROUNDS FOR ISSUANCE.—A court shall issue
16 an order under subsection (a) or (b) only if the court finds
17 that—

18 “(1) alternative technologies or capabilities or
19 the facilities of another carrier are not reasonably
20 available to law enforcement for implementing the
21 interception of communications or access to call-
22 identifying information; and

23 “(2) compliance with the requirements of this
24 chapter is reasonably achievable through the applica-
25 tion of available technology to the feature or service

1 at issue or would have been reasonably achievable if
2 timely action had been taken.

3 “(d) TIME FOR COMPLIANCE.—Upon issuance of an
4 enforcement order under this section, the court shall speci-
5 fy a reasonable time and conditions for complying with
6 its order, considering the good faith efforts to comply in
7 a timely manner, any effect on the carrier’s, manufactur-
8 er’s, or service provider’s ability to continue to do busi-
9 ness, the degree of culpability or delay in undertaking ef-
10 forts to comply, and such other matters as justice may
11 require.

12 “(e) LIMITATION.—An order under this section may
13 not require a telecommunications carrier to meet the gov-
14 ernment’s demand for interception of communications and
15 acquisition of call-identifying information to any extent in
16 excess of the capacity for which notice has been provided
17 under section 2603.

18 “(f) CIVIL PENALTY.—

19 “(1) IN GENERAL.—A court issuing an order
20 under this section against a telecommunications car-
21 rier, a manufacturer of telecommunications trans-
22 mission or switching equipment, or a provider of
23 telecommunications support services may impose a
24 civil penalty of up to \$10,000 per day for each day

1 in violation after the issuance of the order or after
2 such future date as the court may specify.

3 “(2) CONSIDERATIONS.—In determining wheth-
4 er to impose a fine and in determining its amount,
5 the court shall take into account—

6 “(A) the nature, circumstances, and extent
7 of the violation;

8 “(B) the violator’s ability to pay, the viola-
9 tor’s good faith efforts to comply in a timely
10 manner, any effect on the violator’s ability to
11 continue to do business, the degree of culpabil-
12 ity, and the length of any delay in undertaking
13 efforts to comply; and

14 “(C) such other matters as justice may re-
15 quire.

16 “(3) CIVIL ACTION.—The Attorney General
17 may file a civil action in the appropriate United
18 States district court to collect, and the United
19 States district courts shall have jurisdiction to im-
20 pose, such fines.

21 **“§ 2608. Reimbursement of telecommunications car-**
22 **riers**

23 “(a) IN GENERAL.—The Attorney General shall, sub-
24 ject to the availability of appropriations, reimburse tele-

1 communications carriers for all reasonable costs directly
2 associated with—

3 “(1) the modifications performed by carriers
4 prior to the effective date of section 2602 or prior
5 to the expiration of any extension granted under sec-
6 tion 2606(c) to establish the capabilities necessary
7 to comply with section 2602;

8 “(2) meeting the maximum capacity require-
9 ments set forth in the notice under section
10 2603(a)(1)(A); and

11 “(3) expanding existing facilities to accommo-
12 date simultaneously the number of interceptions, pen
13 registers and trap and trace devices for which notice
14 has been provided under section 2603(a)(1)(B).

15 “(b) PROCEDURES AND REGULATIONS.—Notwith-
16 standing any other law, the Attorney General may estab-
17 lish any procedures and regulations deemed necessary to
18 effectuate timely and cost-efficient reimbursement to tele-
19 communications carriers for reimbursable costs incurred
20 under this chapter, under chapters 119 and 121, and
21 under the Foreign Intelligence Surveillance Act of 1978
22 (50 U.S.C. 1801 et seq.).

23 “(c) DISPUTE RESOLUTION.—If there is a dispute
24 between the Attorney General and a telecommunications
25 carrier regarding the amount of reasonable costs to be re-

(b) TECHNICAL AMENDMENT.—The part analysis for part I of title 18, United States Code, is amended by inserting after the item relating to chapter 119 the following new item:

16 SEC. 2. AUTHORIZATION OF APPROPRIATIONS.

20 (1) a total of \$500,000,000 for fiscal years
21 1995, 1996, 1997, and 1998; and
22 (2) such sums as are necessary for each fiscal
23 year thereafter.

1 **SEC. 3. EFFECTIVE DATE.**

2 (a) IN GENERAL.—Except as provided in paragraph
3 (2), chapter 120 of title 18, United States Code, as added
4 by section 1, shall take effect on the date of enactment
5 of this Act.

6 (b) ASSISTANCE CAPABILITY AND SYSTEMS SECU-
7 RITY AND INTEGRITY REQUIREMENTS.—Sections 2602
8 and 2604 of title 18, United States Code, as added by
9 section 1, shall take effect on the date that is 4 years after
10 the date of enactment of this Act.

11 **SEC. 4. REPORTS.**

12 (a) REPORTS BY THE ATTORNEY GENERAL.—

13 (1) IN GENERAL.—On or before November 30,
14 1995, and on or before November 30 of each year
15 for 5 years thereafter, the Attorney General shall
16 submit to the Congress a report on the amounts
17 paid during the preceding fiscal year in reimburse-
18 ment to telecommunications carriers under section
19 2608 of title 18, United States Code, as added by
20 section 1.

21 (2) CONTENTS.—A report under paragraph (1)
22 shall include—

23 (A) a detailed accounting of the amounts
24 paid to each carrier and the technology, feature
25 or service for which the amounts were paid; and

1 (B) projections of the amounts expected to
2 be paid in the current fiscal year, the carriers
3 to which reimbursement is expected to be paid,
4 and the technologies, services, or features for
5 which reimbursement is expected to be paid.

6 (b) REPORTS BY THE COMPTROLLER GENERAL.—

7 (1) IN GENERAL.—On or before April 1, 1996,
8 and April 1, 1998, the Comptroller General of the
9 United States, after consultation with the Attorney
10 General and the telecommunications industry, shall
11 submit to the Congress a report reflecting its audit
12 of the sums paid by the Attorney General to carriers
13 in reimbursement.

14 (2) CONTENTS.—A report under paragraph (1)
15 shall include the findings and conclusions of the
16 Comptroller General on the costs to be incurred
17 after the compliance date, including projections of
18 the amounts expected to be incurred and the tech-
19 nologies, services, or features for which expenses are
20 expected to be incurred.

21 **SEC. 5. CORDLESS TELEPHONES.**

22 (a) DEFINITIONS.—Section 2510 of title 18, United
23 States Code, is amended—

1 (1) in paragraph (1) by striking “but such term
2 does not include” and all that follows through “base
3 unit”; and

4 (2) in paragraph (12) by striking subparagraph
5 (A) and redesignating subparagraphs (B), (C), and
6 (D) as subparagraphs (A), (B), and (C), respec-
7 tively.

8 (b) PENALTY.—Section 2511 of title 18, United
9 States Code, is amended—

10 (1) in subsection (4)(b)(i) by inserting “a
11 cordless telephone communication that is transmit-
12 ted between the cordless telephone handset and the
13 base unit,” after “cellular telephone communica-
14 tion,”; and

15 (2) in subsection (4)(b)(ii) by inserting “a
16 cordless telephone communication that is transmit-
17 ted between the cordless telephone handset and the
18 base unit,” after “cellular telephone communica-
19 tion,”.

20 **SEC. 6. RADIO-BASED DATA COMMUNICATIONS.**

21 Section 2510(16) of title 18, United States Code, is
22 amended—

23 (1) by striking “or” at the end of subparagraph
24 (D);

1 (2) by inserting “or” at the end of subpara-
2 graph (E); and

3 (3) by inserting after subparagraph (E) the fol-
4 lowing new subparagraph:

5 “(F) an electronic communication;”

6 **SEC. 7. PENALTIES FOR MONITORING RADIO COMMUNICA-**
7 **TIONS THAT ARE TRANSMITTED USING MOD-**
8 **ULATION TECHNIQUES WITH NONPUBLIC PA-**
9 **RAMETERS.**

10 Section 2511(4)(b) of title 18, United States Code,
11 is amended by striking “or encrypted, then” and inserting
12 “, encrypted, or transmitted using modulation techniques
13 the essential parameters of which have been withheld from
14 the public with the intention of preserving the privacy of
15 such communication”.

16 **SEC. 8. TECHNICAL CORRECTION.**

17 Section 2511(2)(a)(i) of title 18, United States Code,
18 is amended by striking “used in the transmission of a wire
19 communication” and inserting “used in the transmission
20 of a wire or electronic communication”.

21 **SEC. 9. FRAUDULENT ALTERATION OF COMMERCIAL MO-**
22 **BILE RADIO INSTRUMENTS.**

23 (a) OFFENSE.—Section 1029(a) of title 18, United
24 States Code, is amended—

1 (1) by striking “or” at the end of paragraph
2 (3); and

3 (2) by inserting after paragraph (4) the follow-
4 ing new paragraphs:

5 “(5) knowingly and with intent to defraud uses,
6 produces, traffics in, has control or custody of, or
7 possesses a telecommunications instrument that has
8 been modified or altered to obtain unauthorized use
9 of telecommunications services; or

10 “(6) knowingly and with intent to defraud uses,
11 produces, traffics in, has control or custody of, or
12 possesses—

13 “(A) a scanning receiver; or

14 “(B) hardware or software used for alter-
15 ing or modifying telecommunications instru-
16 ments to obtain unauthorized access to tele-
17 communications services,”.

18 (b) PENALTY.—Section 1029(c)(2) of title 18, United
19 States Code, is amended by striking “(a)(1) or (a)(4)” and
20 inserting “(a) (1), (4), (5), or (6)”.

21 (c) DEFINITIONS.—Section 1029(e) of title 18, Unit-
22 ed States Code, is amended—

23 (1) in paragraph (1) by inserting “electronic se-
24 rial number, mobile identification number, personal
25 identification number, or other telecommunications

1 service, equipment, or instrument identifier,” after
 2 “account number,”;

3 (2) by striking “and” at the end of paragraph
 4 (5);

5 (3) by striking the period at the end of para-
 6 graph (6) and inserting “; and”; and

7 (4) by adding at the end the following new
 8 paragraph:

9 “(7) the term ‘scanning receiver’ means a de-
 10 vice or apparatus that can be used to intercept a
 11 wire or electronic communication in violation of
 12 chapter 119.”.

13 **SEC. 10. TRANSACTIONAL DATA.**

14 (a) DISCLOSURE OF RECORDS.—Section 2703 of title
 15 18, United States Code, is amended—

16 (1) in subsection (c)—

17 (A) in subparagraph (B)—

18 (i) by striking clause (i); and

19 (ii) by redesignating clauses (ii), (iii),

20 (iv) as clauses (i), (ii), and (iii), respec-
 21 tively; and

22 (B) by adding at the end the following new
 23 subparagraph:

24 “(C) A provider of electronic communica-
 25 tion service or remote computing service shall

1 disclose to a governmental entity the name, bill-
2 ing address, and length of service of a sub-
3 scriber to or customer of such service and the
4 types of services the subscriber or customer uti-
5 lized, when the governmental entity uses an ad-
6 ministrative subpoena authorized by a Federal
7 or State statute or a Federal or State grand
8 jury or trial subpoena or any means available
9 under subparagraph (B).”; and

10 (2) by amending the first sentence of subsection
11 (d) to read as follows: “A court order for disclosure
12 under subsection (b) or (c) may be issued by any
13 court that is a court of competent jurisdiction de-
14 scribed in section 3126(2)(A) and shall issue only if
15 the governmental entity offers specific and
16 articulable facts showing that there are reasonable
17 grounds to believe that the contents of a wire or
18 electronic communication, or the records or other in-
19 formation sought, are relevant and material to an
20 ongoing criminal investigation.”.

21 (b) PEN REGISTERS AND TRAP AND TRACE DE-
22 VICES.—Section 3121 of title 18, United States Code, is
23 amended—

24 (1) by redesignating subsection (c) as sub-
25 section (d); and

1 (2) by inserting after subsection (b) the follow-
2 ing new subsection:

3 “(c) LIMITATION.—A government agency authorized
4 to install and use a pen register under this chapter or
5 under State law, shall use technology reasonably available
6 to it that restricts the recording or decoding of electronic
7 or other impulses to the dialing and signalling information
8 utilized in call processing.”.

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